

July 11 2008

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**Bozeman Municipal Court**  
**615 South 16th Avenue, Suite 123**  
**Bozeman, MT 59715**

**Honorable Karl P. Seel**  
**Municipal Judge**

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**Members of the Committee:**

I join Judge Wall in writing in opposition to the proposed language in Section 3.10 and/or the applicable definitions contained in 'Applications II. Full-time judge' as found in the proposed code.

As illustrated in Polson by Judge Wall many of Montana's growing communities have the chance to have fully trained and experienced attorneys to fill their needs for judges in the Courts of limited jurisdiction. The jobs quickly become full time as defined in the definition as working 40 hours a week. The effect of using this definition is to prevent an attorney from taking these positions. There is probably not a single judgeship in Montana for which a city or town pays a wage comparable to that of practicing attorney. However if an attorney is willing to serve his or her community and can still supplement their income by a limited practice they can provide a great service to their community. This is not to say that non-attorney judge are not qualified. Some of our best judges are non-attorneys. However, given that the Legislature wrestles with the question every year about judges having more legal training for courts of record it is counterintuitive at the same time to write a code that discourages (if not eliminating) the possibility of attorneys serving as judges where they are most needed. Any perceived conflicts or possible abuses are adequately handled by the other rules of conduct. It seems to me that a licensed attorney having three years of law school and bar accreditation would be in most cases best qualified to be a judge working a larger court. Yet the effect of the proposed rule would be to discourage the most trained and skilled from taking those positions due to the loss of income.

The prohibition for judges in the courts of limited jurisdiction from supplementing their income only applies to attorneys. It appears that other professionals can work as judges such as physicians, accountants, ranchers, etc.. The committee also saw it as beneficial to exempt part time and substitute judges from the ban. It would be equally beneficial (and fair) to allow attorneys the same opportunity.

Montana courts vary in size from very small to quite large and this rule would diminish the chances of attracting skilled lawyers to the judgeships in the growing and larger communities that continue to demand more from their judges.

I would propose the elimination of the requirement of Rule 3.10 (A) until such time as Montana is able to pay judges full time wages comparable to the skills sought for a 'full time' judge. The need for Rule 3.10 is not demonstrable yet the detrimental effect of 3.10 (A) is. As an alternative and perhaps palatable alternative I would suggest that the definition be amended to define 'full time judge' not from the hours worked but from the income received and set an amount (above \$100,000 per year) or at above the average minimum amount received in Montana for a licensed attorney with minimum five years experience.

Even subsection (C) is prohibitive when it prevents attorneys from helping their own families. This blanket prohibition would prevent me from doing a family probate, a name change, an adoption and require family members to pay for another attorney in the many legal interactions of life. The clear effect is to remove attorneys from the prospects of serving the growing communities in Montana.

As pointed out above any abuses that could occur are adequately addressed in the other codes of conduct. Furthermore, if there is a perception that judges that work '40 hours a week' in larger jurisdictions may have conflicts how bad is the possibility that part-time judges in smaller jurisdiction wouldn't have even greater conflicts of interest?

I would be sad to see attorney/judges in courts of limited jurisdiction become a thing of the past. Furthermore it would be unfortunate for the people of Polson and other cities to lose highly qualified people that **they elected** from serving due to the passage of this code provision.

Thank you for your consideration of not placing this restriction in your final proposal.

Very Truly Yours,



Karl P. Seel

Bozeman Municipal Court Judge